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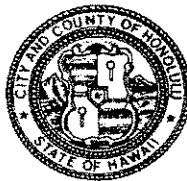
DEPARTMENT OF HUMAN RESOURCES

**CITY AND COUNTY OF HONOLULU**

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KEVIN H. NAKAMATSU  
DIRECTOR

CITY COUNCIL  
HONOLULU, HAWAII

May 14, 2008

The Honorable Ann H. Kobayashi, Chair  
and Members of the Executive Matters Committee  
Honolulu City Council  
530 South King Street, Room 202  
Honolulu, Hawaii 96813

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CITY CLERK  
HONOLULU, HAWAII

Dear Chair Kobayashi and Councilmembers:

Subject: Resolution 07-384 – Charter Amendment Regarding Civil Penalties

This is submitted in response to concerns that were raised during the Council meeting held on February 20, 2008, regarding the above-referenced matter.

The Department of Human Resources, respectfully opposes Resolution 07-384, which seeks to expand the Ethics Commission's authority to impose civil fines for violation of the City's ethical standards to all employees of the City including those who belong to a bargaining unit.

First, pursuant to HRS §89-9, which encapsulates a basic tenet of labor law, an action taken by the employer which affects the terms and conditions of employment is subject to negotiations with the employee representative(s). Therefore, before the City can implement a policy that allows for the imposition of civil fines to all City employees who violate the City's ethical standards, the matter may have to be negotiated with the various unions if it is determined that such policy affects terms and conditions of employment and is not considered a management right under HRS §89-9(d). Although the Legislature has vested the State's Ethics Commission with the authority to impose civil fines to all state employees who violate state ethics standards, it does not necessarily mean that the matter will not be challenged by the unions.

Second, because the matter may be subject to collective bargaining and, thus, subject to the terms and conditions of the respective collective bargaining agreements, any civil fine imposed on an included employee would be subject to the grievance procedures set forth in the collective bargaining agreement covering that particular employee. It is this department's opinion that adjudicating a union challenge to the fine imposed via the grievance process may be cost prohibitive as the City's share of the arbitration will, at a minimum, include the cost of the arbitrator, the court reporter, and the transcripts of the hearing.

Third, vesting such authority to the Ethics Commission may undermine the City's ability to properly discipline an employee who has committed wrongdoing as the fine imposed could be

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construed as a "disciplinary action" taken by the employer which would result in prohibiting the City from assessing proper discipline to an employee under the doctrine of industrial double jeopardy.


Based on the foregoing, the Department of Human Resources respectfully requests that the City Council reconsiders passing Council Resolution 07-384.

Sincerely,



Ken Y. Nakamatsu  
Director

APPROVED:



Wayne M. Hashiro, P.E.  
Managing Director